

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO. 133 OF 2002

1. Betul Sports Club,
Registered under Societies
Registration Act, 1960
under Registered No.53/Goa/90,
Betul, Goa, represented
by its President
Shri Remedios Simoes,
major of age,
Service, resident of
H.No.42, Novowaddo, Betul,
Quepem.
2. Shri Mercus Simoes,
major of age, service,
Secreetary of Betul Sports Club,
resident of Novo-waddo,
H.No.43, Betul, Quepem.
3. Shri Pedro Simoes,
major of age, widow,
agriculturist, and his son.
4. Shri Jack Simoes,
major of age, service,
Member of Betul Sports Club,
both residrent of H.No.87,
Tankewaddo, Betul, Quepem,Goa.
5. Smt. Cristalina Simoes,
major of age, married,
housewife, wife of Jack Simoes.
6. Shri Romeo Simoes,
major of age, service, Member
of Betul Sports Club, both
resident of House No.96,
Betul, Quepem, Goa.
7. Shri Seby Fernandes,
major of age, service,
Member of Betul Sports Club,
House No.99,
resident of Tariwaddo, Betul,
Queepem, Goa.

... Applicants.

versus

1. Smt. Shamir Simoes,
aged about 55 years, married,
agriculturist and

2. Smt. Beena Simoes,
major of age, widow,
agriculturist, both
residents of H.No.91,
Tankewaddo, Betul, Quepem,
Goa.
 3. Smt. Constantina Simoes,
major of age, widow,
agriculturist, resident of
H.No.89, Tankewaddo, Betul,
Quepem, Goa.
 4. Smt. Martina Simoes,
major of age, widow,
agriculturist and
 5. Shri Lourenco Simoes,
major of age, married,
agriculturist, both
residents of H.No.90,
Tankewaddo, Betul,
Quepem, Goa.
- ... Respondents.

Mr. Nitin Sardessai, Advocate for the Applicants.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S.Karpe,
Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 12TH JULY, 2002.

ORAL JUDGMENT

By consent of the parties, this Civil Revision Application is taken up for final hearing.

2. I have heard Mr. Nitin Sardessai, the learned Counsel appearing for the Applicants, who has assailed the Order of the learned IInd Additional District Judge, South Goa, Margao in Miscellaneous Civil Appeal No.31/2000, dated 30th October, 2001, whereby the learned lower appellate Court had allowed the application under Order XXXIX Rule 1

and 2 of the Code of Civil Procedure, filed by the present Respondents/Plaintiffs. The operative part of the Order of the learned lower appellate Court reads as under:-

"The Appeal is hereby allowed. The impugned order dated 9-2-2000 is hereby set aside. Consequently the injunction application dated 6-3-2000 is allowed. The defendants, their servants, agents, etc. are hereby restrained from disturbing the possession of the plaintiffs in respect of the suit paddy field till the disposal of the suit on merits".

3. Mr. J. E. Coelho Pereira, the learned Senior Counsel appearing for the Respondents/Plaintiffs after arguing for some time on behalf of the Respondents, in support of the Order of the learned lower appellate Court submitted that the Plaintiffs may be permitted to withdraw the original application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, filed by the Plaintiffs before the learned Trial Court with liberty to file a fresh application for injunction.

4. Mr. Nitin Sardesai, the learned Counsel appearing for the Applicants/Defendants has no objection for allowing the Respondents/Plaintiffs to withdraw the said application.

5. The Respondents/Plaintiffs are permitted to withdraw Civil Miscellaneous Application No.145/99/B, filed by the Respondents/Plaintiffs in Regular Civil Suit No.65/99/B, pending on the file of the Civil Judge, Junior Division, Quepem. As a consequence of the withdrawal of the said application, the Order passed thereon by the learned Civil Judge, Junior Division, Quepem dated 9th February, 2000 and the Order of the IInd Additional District Judge, South Goa, Margao, in Miscellaneous Civil Appeal No.31/2000, dated 30th October, 2001 are hereby quashed and set aside. The Respondents/Plaintiffs are at liberty to file a fresh application if they so desire. If, such an application is filed, the Courts below should not be influenced by any of the observations made in the Orders by either the learned Trial Court or the learned lower appellate Court. In the event, the Respondents/Plaintiffs choose to file a fresh application, it is needless to mention that the learned Trial Court shall expeditiously decide the said application.

6. The Civil Revision Application is, therefore, allowed in the aforesaid terms and the impugned Orders are quashed and set aside giving liberty to the Respondents/Plaintiffs to file a fresh application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure.

7. Civil Revision Application is allowed with no order as to costs.

P. V. HARDAS, J.